

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1400

Introduced by Senators Romero and Speier

February 18, 2004

An act to add ~~Section 5058.8 to~~ Chapter 2.5 (commencing with Section 5072) to Title 7 of Part 3 of the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Romero. Corrections: ~~Office of Internal Affairs.~~

Existing law provides for the administration of a system of state prisons under the Department of Corrections within the Youth and Adult Correctional Agency. Existing law establishes the Office of the Inspector General, who is responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections and related state offices, as specified. Existing statutory and case law provides for some of the procedures by which public employees may be disciplined. Existing law limits the release of certain types of information relating to public employment, including special provisions that protect against the release of information concerning complaints against peace officers, including correctional officers in state prisons.

This bill would make findings and declarations relating to problems in the investigation and disciplinary processes used by the Department of Corrections regarding its workforce, and would require the Department to adopt regulations to remedy various identified aspects of these investigation and discipline processes, as specified.

~~Under existing law, a member of the Office of Internal Affairs of the Department of Corrections is a peace officer, and training requirements are specified for those officers. Regulations make reference to the Office of Internal Affairs, and provide that certain sexual violations be reported to, and that uses of deadly force be pursued by employees designated by, officers of the Office of Internal Affairs, as specified.~~

~~This bill would require the department to establish written criteria for investigations conducted by the Office of Internal Affairs.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 5058.8 is added to the Penal Code, to~~
2 *SECTION 1. Chapter 2.5 (commencing with Section 5072) is*
3 *added to Title 7 of Part 3 of the Penal Code, to read:*

4
5 *CHAPTER 2.5. CORRECTIONAL EMPLOYEE DISCIPLINE*
6

7 *5072. (a) The Legislature finds and declares all of the*
8 *following:*

9 *(1) The Department of Corrections has an inadequate*
10 *employee investigation and disciplinary process with*
11 *shortcomings and barriers to improvement that have been clearly*
12 *identified.*

13 *(2) Specifically, problems exist in the integrity, quality, and*
14 *timeliness of investigations, and the efficiency, integrity, quality,*
15 *and timeliness of the disciplinary action process. Furthermore,*
16 *improvement in these systems has been hampered by the absence*
17 *of sufficient oversight of the overall investigation and discipline*
18 *process, the absence of a functional system for evaluating and*
19 *improving these processes as they have evolved, and by the “code*
20 *of silence” of correctional employees regarding employee*
21 *misconduct.*

22 *(b) It is therefore the intent of the Legislature in enacting this*
23 *chapter to eliminate these barriers to improvement, and to*
24 *eliminate these problems in the operation of employee*
25 *investigation and discipline systems.*

26 *5072.2. (a) The Department of Corrections shall adopt*
27 *regulations to govern the process by which allegations of employee*

1 *misconduct are investigated and pursued, through and including*
2 *the imposition of discipline.*

3 *(b) The regulations adopted shall, to the extent possible, do all*
4 *of the following:*

5 *(1) Compel all employees to immediately report misconduct,*
6 *ensure punishment for anyone who retaliates against a person for*
7 *reporting misconduct, and otherwise encourage and protect those*
8 *who report misconduct.*

9 *(2) Impose a duty on all employees to cooperate with*
10 *investigations, including disclosing all associated facts and*
11 *information, except as explicitly provided by law.*

12 *(3) Ensure the accuracy, fairness, and impartiality of*
13 *investigations, including ensuring that those investigations are*
14 *free from outside influence and internal conflicts of interest.*

15 *(4) Include policies and procedures to guide investigations and*
16 *the disciplinary action process, and a definitive description of the*
17 *role and responsibility of each employee in investigations and*
18 *disciplinary actions.*

19 *(5) Ensure swift, reliable, and consistent disciplinary action*
20 *when wrongdoing occurs.*

21 *(6) Create a transparent disciplinary process by disseminating*
22 *data regarding investigations, disciplinary actions, and the*
23 *effectiveness of related department processes to the extent*
24 *permitted by subdivision (c) of Section 832.7.*

25 *(7) Provide that every departmental employee, including, but*
26 *not limited to, those who are responsible for investigations and*
27 *disciplinary procedures, is properly trained to enforce these*
28 *regulations and is dedicated to the policies stated in paragraphs*
29 *(1) to (6), inclusive.*

30 *5072.4. In the regulations adopted pursuant to Section*
31 *5072.2, the department shall incorporate provisions to do all of the*
32 *following to eliminate the code of silence:*

33 *(a) Seek an outside assessment of the organizational culture of*
34 *the department, and assistance in facilitating change in that*
35 *culture.*

36 *(b) Require the Secretary of the Youth and Adult Correctional*
37 *Agency and the director to publish joint memoranda at least every*
38 *six months informing employees that neither will tolerate a code*
39 *of silence, including any associated behavior or retaliation.*

1 (c) *Require the employee Code of Ethics to include a duty to*
2 *report misconduct and to cooperate during investigations by*
3 *disclosing all associated facts and information, except as*
4 *explicitly provided by law, and require all academy cadets and*
5 *other new law enforcement agents to sign the Code of Ethics for*
6 *placement in their personnel files.*

7 (d) *Require the Department Operations Manual to instruct all*
8 *department employees that the failure to fully and candidly provide*
9 *information, including intentional and negligent omissions, will*
10 *result in serious disciplinary action, up to and including dismissal,*
11 *except for an invocation of the Fifth Amendment in a criminal*
12 *matter.*

13 (e) *Require the secretary to inform all wardens in person, and*
14 *all academy cadets by videotaped message, of the seriousness with*
15 *which the agency is taking this problem, including communicating*
16 *the content of this section and the resulting regulations.*

17 (f) *Require the director to develop an ethics course to be taught*
18 *at each prison with special emphasis on combating the code of*
19 *silence.*

20 (g) *Require each warden to publish to all employees through*
21 *the prison's monthly In-Service Training Bulletin information*
22 *regarding the revised Code of Ethics; the duty to report*
23 *misconduct; how to report misconduct; the duty to fully cooperate*
24 *during investigations; and assurances against retaliation.*

25 5072.6. *In the regulations adopted pursuant to Section*
26 *5072.2, the department shall incorporate provisions to do all of the*
27 *following to improve the integrity, quality, and timeliness of*
28 *investigations:*

29 (a) *Implement an Office of Independent Review within the*
30 *Office of the Inspector General.*

31 (b) *Conduct an overall operational review of the Office of*
32 *Investigative Services (OIS), also known as the Office of Internal*
33 *Affairs, relying on expert assistance. This review shall evaluate*
34 *and recommend changes in the roles and responsibilities of the*
35 *OIS, how it functions within the department and the Youth and*
36 *Adult Correctional Agency, and how it interfaces with other*
37 *agencies and functions. In addition to others identified in the*
38 *review, the following changes in practice shall be implemented by*
39 *the regulations:*

1 *(1) The Office of Independent Review shall be made*
2 *responsible for contemporaneous quality control of OIS*
3 *investigations, and for advising the department regarding the*
4 *adequacy of each investigation and whether discipline of the*
5 *subject of the investigation is warranted.*

6 *(2) The Office of Independent Review shall publish annual*
7 *public reports regarding investigations and adverse actions,*
8 *consistent with subdivision (c) of Section 832.7.*

9 *(c) Bring management control to OIS investigations by*
10 *developing specific policies, procedures, and expectations.*

11 *(d) Issue a confidentiality policy that will protect investigations*
12 *from external influences and interference.*

13 *(e) Conduct statewide recruitment when filling investigator*
14 *vacancies.*

15 *(f) Survey OIS employees and managers to identify*
16 *impediments to the investigative process and operational*
17 *enhancements.*

18 *(g) Develop a statewide electronic case management system for*
19 *use in contemporaneous tracking and monitoring of*
20 *investigations, and as a source of reliable data for ongoing reports*
21 *and audits of OIS operations.*

22 *(h) Develop a centralized Administrative Support Unit within*
23 *the OIS to provide essential assistance to conduct continuous*
24 *operational review, coordinate and implement changes, and*
25 *develop a self-audit tool. This unit shall do all of the following:*

26 *(1) Evaluate existing OIS policy, procedures, and operating*
27 *systems, and coordinate revisions, where needed.*

28 *(2) Coordinate the development of an Administrative Policies*
29 *and Procedures Manual for the OIS.*

30 *(3) Implement the Case Management System described in*
31 *subdivision (g) and implement an OIS self-audit plan.*

32 *(4) Coordinate training for investigators, and develop*
33 *management reports.*

34 *(i) Using the case management system, the OIS shall develop*
35 *reports that capture the number, type, and disposition of employee*
36 *misconduct complaints, and shall provide disposition and related*
37 *reports to the extent permitted by subdivision (c) of Section 832.7*
38 *of the Penal Code to the appropriate oversight and regulatory*
39 *agencies, the Legislature, and other interested parties.*

1 (j) *Develop a special investigations unit within the OIS to*
2 *reduce the potential for conflict when investigating misconduct*
3 *allegations within the OIS and to optimize management control*
4 *over high-profile and other sensitive investigations.*

5 (k) *Evaluate the existing OIS staff resources and skills, and*
6 *align them with newly defined roles and responsibilities.*

7 (l) *Assess the existing training given OIS agents, and*
8 *implement changes so that agents receive training at law*
9 *enforcement “industry standard” levels.*

10 (m) *Review every aspect of the OIS operations, including*
11 *continuous self-auditing.*

12 5072.8. *In the regulations adopted pursuant to Section*
13 *5072.2, the department shall incorporate provisions to do all of the*
14 *following to improve the efficiency, quality, timeliness, and*
15 *integrity of the disciplinary process:*

16 (a) *Bring in expert assistance from outside the Department of*
17 *Corrections to be employed by the Youth and Adult Correctional*
18 *Agency to develop and implement necessary and discretionary*
19 *changes described in this section.*

20 (b) *Require changes in the Employment Law Unit at the*
21 *Department of Corrections that will do all of the following:*

22 (1) *Eliminate the use of untrained, nonattorney employment*
23 *relations officers in presenting cases before the State Personnel*
24 *Board.*

25 (2) *Provide for the assignment of an attorney to a case at the*
26 *outset.*

27 (3) *Redefine the mission, role, and responsibilities of the*
28 *Employment Law Unit consistent with this section.*

29 (c) *Implement a vertical prosecution system that shall include*
30 *the assignment of an attorney to assist beginning at the*
31 *investigation stage, and attorney assistance in the drafting of*
32 *adverse actions and in the presentation of cases before the State*
33 *Personnel Board.*

34 (d) *Streamline and simplify the preparation and review of*
35 *disciplinary actions prior to service, including clearly defining the*
36 *roles and responsibilities of each participant in the disciplinary*
37 *process.*

38 (e) *Require written communication from the Secretary of the*
39 *Youth and Adult Correctional Agency communicating a policy*

1 *prohibiting disclosure of facts and other information regarding*
2 *ongoing investigations and pending adverse employment actions.*

3 *(f) Provide for the development and implementation of a*
4 *disciplinary matrix with offenses and associated punishments*
5 *applicable equally to all Department of Corrections employees,*
6 *for notice and consistency statewide.*

7 *(g) Ensure that the Employee Misconduct Information System*
8 *is electronically compatible with the case management system,*
9 *and reliably maintains disciplinary action data.*

10 *(h) Report the number, type, and disposition of adverse actions*
11 *cases and employee discipline cases to the appropriate oversight*
12 *and regulatory agencies, the Legislature, and other interested*
13 *parties, to the extent permitted by subdivision (c) of Section 832.7.*

14 *(i) Specify policies and procedures regarding all of the*
15 *following:*

16 *(1) Vertical prosecution.*

17 *(2) Settlements.*

18 *(3) Skelly hearing requirements drawn up with consideration of*
19 *the Pelican Bay model.*

20 *(4) Employees testifying as expert witnesses.*

21 *(5) Writs and appeals following State Personnel Board*
22 *disciplinary action decisions.*

23 *(j) Improve the hiring and training of people who work in the*
24 *disciplinary processes for employees of the Department of*
25 *Corrections by requiring the department to do all of the following:*

26 *(1) Train employment relations officers and wardens in*
27 *evaluating investigative reports based on the preponderance of*
28 *evidence standard that applies to administrative actions.*

29 *(2) Develop selection criteria and ethical standards for its*
30 *employment law attorneys, employment relations officers, and its*
31 *labor relations division positions, and apply those criteria and*
32 *standards in recruitment selection and training.*

33 *(3) Implement a training and orientation program for*
34 *employment law unit attorneys, and a statewide training program*
35 *for employment relations officers and labor relations staff charged*
36 *with employee discipline responsibilities to remedy the*
37 *deficiencies identified in this chapter.*

38 *5073. In the regulations adopted pursuant to Section 5072.2,*
39 *the Department of Corrections shall incorporate provisions to do*
40 *all of the following to assure the implementation, monitoring, and*

1 *continual assessment of the effectiveness of its efforts under this*
2 *chapter:*

3 *(a) Develop and publish procedures mandating quantitative*
4 *and qualitative reports to the Youth and Adult Correctional Agency*
5 *on the implementation of this chapter, including objective*
6 *measures of progress like case results, average investigation time,*
7 *number of cases not prepared for filing decision prior to statutory*
8 *time bars, and similar measures.*

9 *(b) Require the employment by the Youth and Adult*
10 *Correctional Agency of an outside expert on employee discipline*
11 *to monitor the implementation and effectiveness of this chapter,*
12 *including reviewing the reports produced pursuant to subdivision*
13 *(a).*

14 ~~read:~~

15 ~~5058.8. The director shall establish written criteria for~~
16 ~~investigations conducted by the Office of Internal Affairs.~~

